



General Assembly

February Session, 2016

Raised Bill No. 448

LCO No. 2900



Referred to Committee on FINANCE, REVENUE AND
BONDING

Introduced by:
(FIN)

AN ACT CONCERNING STATE TAX POLICY.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Subparagraph (A) of subdivision (28) of subsection (a) of
2 section 12-213 of the 2016 supplement to the general statutes is
3 repealed and the following is substituted in lieu thereof (*Effective from*
4 *passage and applicable to income years commencing on or after January 1,*
5 *2016*):

6 (28) (A) "Captive real estate investment trust" means, except as
7 provided in subparagraph (B) of this subdivision, a corporation, a trust
8 or an association (i) that is considered a real estate investment trust for
9 the taxable year under Section 856 of the Internal Revenue Code; (ii)
10 that is not regularly traded on an established securities market; (iii) in
11 which more than fifty per cent of the voting power, beneficial interests
12 or shares are owned or controlled, directly or constructively, by a
13 single entity that is subject to Subchapter C of Chapter 1 of the Internal
14 Revenue Code; and (iv) that is not a qualified real estate investment
15 trust, as defined in subdivision (3) of subsection (a) of section 12-217.

16 Any voting power, beneficial interests or shares in a real estate
 17 investment trust that are directly owned or controlled by a segregated
 18 asset account of a life insurance company, as described in Section 817
 19 of the Internal Revenue Code, shall not be taken into account for
 20 purposes of determining whether a real estate investment trust is a
 21 captive real estate investment trust.

22 Sec. 2. Subsection (b) of section 12-218 of the 2016 supplement to the
 23 general statutes is repealed and the following is substituted in lieu
 24 thereof (*Effective from passage and applicable to income years commencing*
 25 *on or after January 1, 2016*):

26 (b) Except as otherwise provided in this chapter, on and after
 27 January 1, 2016, the net income of the taxpayer shall be apportioned
 28 within and without the state by means of an apportionment fraction.
 29 The apportionment fraction shall represent the part of the taxpayer's
 30 gross receipts from sales or other sources during the income year,
 31 computed according to the method of accounting used in the
 32 computation of its entire net income, which is assignable to the state,
 33 and excluding any gross receipts attributable to an international
 34 banking facility as defined in section 12-217. [, but including] For the
 35 purposes of this subsection:

36 (1) Gross receipts from sales of tangible personal property are
 37 assignable to this state if the property is delivered or shipped to a
 38 purchaser within this state, other than a company which qualifies as a
 39 Domestic International Sales Corporation (DISC) as defined in Section
 40 992 of the Internal Revenue Code of 1986, or any subsequent
 41 corresponding internal revenue code of the United States, as from time
 42 to time amended, and as to which a valid election under Subsection (b)
 43 of said Section 992 to be treated as a DISC is effective, regardless of the
 44 F.O.B. point or other conditions of the sale. [,]

45 (2) Gross receipts from services [performed within the state, rentals
 46 and royalties from properties situated within the state, royalties from

47 the use of patents or copyrights within the state,] are assignable to this
48 state if the market for services is in this state. The taxpayer's market for
49 the services is in this state if and to the extent the service is used at a
50 location in this state.

51 (3) Gross receipts from the rental, lease or license of real or tangible
52 personal property are assignable to this state to the extent such
53 property is situated within the state.

54 (4) Gross receipts from the rental, lease or license of intangible
55 property are assignable to this state if and to the extent the property is
56 used in this state. Intangible property utilized in marketing a good or
57 service to a consumer is used in this state if that good or service is
58 purchased by a consumer in this state.

59 (5) Gross receipts from interest managed or controlled within the
60 state [, net gains from the sale or other disposition of intangible assets
61 managed or controlled within the state, net gains from the sale or other
62 disposition of tangible assets situated within the state and all other
63 receipts earned within the state] are assignable to this state.

64 (6) Gross receipts from the sale or other disposition of real property,
65 tangible personal property or intangible property are excluded from
66 the calculation of the apportionment fraction if such property is not
67 held by the taxpayer primarily for sale to customers in the ordinary
68 course of the taxpayer's trade or business.

69 (7) Gross receipts, other than those receipts described in
70 subdivisions (1) to (6), inclusive, of this subsection, are assignable to
71 this state to the extent the taxpayer's market for the sales is in this state.

72 Sec. 3. Subsection (b) of section 12-222 of the 2016 supplement to the
73 general statutes is repealed and the following is substituted in lieu
74 thereof (*Effective from passage and applicable to income years commencing*
75 *on or after January 1, 2016*):

76 (b) Such return shall be due on or before the first day of the month
 77 next succeeding the due date of the company's corresponding federal
 78 income tax return for the income year, determined without regard to
 79 any extension of time for filing, or, in the case of any company that is
 80 not required to file a federal income tax return for the income year, on
 81 or before the first day of the [fourth] fifth month next succeeding the
 82 end of the income year.

83 Sec. 4. Subdivision (12) of subsection (a) of section 12-407 of the 2016
 84 supplement to the general statutes is repealed and the following is
 85 substituted in lieu thereof (*Effective October 1, 2016*):

86 (12) "Retailer" includes: (A) Every person engaged in the business of
 87 making sales at retail or in the business of making retail sales at
 88 auction of tangible personal property owned by the person or others;
 89 (B) every person engaged in the business of making sales for storage,
 90 use or other consumption or in the business of making sales at auction
 91 of tangible personal property owned by the person or others for
 92 storage, use or other consumption; (C) every operator, as defined in
 93 subdivision (18) of this subsection; (D) every seller rendering any
 94 service described in subdivision (2) of this subsection; (E) every person
 95 under whom any salesman, representative, peddler or canvasser
 96 operates in this state, or from whom such salesman, representative,
 97 peddler or canvasser obtains the tangible personal property that is
 98 sold; (F) every person with whose assistance any seller is enabled to
 99 solicit orders within this state; (G) every person making retail sales
 100 from outside this state to a destination within this state and not
 101 maintaining a place of business in this state who engages in regular or
 102 systematic solicitation of sales of tangible personal property in this
 103 state (i) by the display of advertisements on billboards or other
 104 outdoor advertising in this state, (ii) by the distribution of catalogs,
 105 periodicals, advertising flyers or other advertising by means of print,
 106 radio or television media, or (iii) by mail, telegraphy, telephone,
 107 computer data base, cable, optic, microwave or other communication
 108 system, for the purpose of effecting retail sales of tangible personal

109 property, provided such person has made one hundred or more retail
110 sales from outside this state to destinations within this state during the
111 twelve-month period ended on the September thirtieth immediately
112 preceding the monthly or quarterly period with respect to which such
113 person's liability for tax under this chapter is determined; (H) any
114 person owned or controlled, either directly or indirectly, by a retailer
115 engaged in business in this state which is the same as or similar to the
116 line of business in which such person so owned or controlled is
117 engaged; (I) any person owned or controlled, either directly or
118 indirectly, by the same interests that own or control, either directly or
119 indirectly, a retailer engaged in business in this state which is the same
120 as or similar to the line of business in which such person so owned or
121 controlled is engaged; (J) any assignee of a person engaged in the
122 business of leasing tangible personal property to others, where leased
123 property of such person which is subject to taxation under this chapter
124 is situated within this state and such assignee has a security interest, as
125 defined in subdivision (35) of subsection (b) of section 42a-1-201, in
126 such property; (K) every person making retail sales of items of tangible
127 personal property from outside this state to a destination within this
128 state and not maintaining a place of business in this state who repairs
129 or services such items, under a warranty, in this state, either directly or
130 indirectly through an agent, independent contractor or subsidiary;
131 [and] (L) every person making sales of tangible personal property or
132 services through an agreement with another person located in this
133 state under which such person located in this state, for a commission
134 or other consideration that is based upon the sale of tangible personal
135 property or services by the retailer, directly or indirectly refers
136 potential customers, whether by a link on an Internet web site or
137 otherwise, to the retailer, provided the cumulative gross receipts from
138 sales by the retailer to customers in the state who are referred to the
139 retailer by all such persons with this type of an agreement with the
140 retailer, is in excess of two thousand dollars during the preceding four
141 quarterly periods ending on the last day of March, June, September
142 and December; and (M) every person who has a substantial economic

143 presence within this state, evidenced by a purposeful direction of
144 business toward this state, examined in light of the frequency, quantity
145 and systematic nature of the retailer's economic contacts with this
146 state, without regard to physical presence, and to the extent permitted
147 under the Constitution of the United States.

148 Sec. 5. Subparagraph (A) of subdivision (15) of subsection (a) of
149 section 12-407 of the 2016 supplement to the general statutes is
150 repealed and the following is substituted in lieu thereof (*Effective*
151 *October 1, 2016*):

152 (15) (A) "Engaged in business in the state" means and includes but
153 shall not be limited to the following acts or methods of transacting
154 business: (i) Selling in this state, or any activity in this state in
155 connection with selling in this state, tangible personal property for use,
156 storage or consumption within the state; (ii) engaging in the transfer
157 for a consideration of the occupancy of any room or rooms in a hotel or
158 lodging house for a period of thirty consecutive calendar days or less;
159 (iii) rendering in this state any service described in any of the
160 subparagraphs of subdivision (2) of this subsection; (iv) maintaining,
161 occupying or using, permanently or temporarily, directly or indirectly,
162 through a subsidiary or agent, by whatever name called, any office,
163 place of distribution, sales or sample room or place, warehouse or
164 storage point or other place of business or having any representative,
165 agent, salesman, canvasser or solicitor operating in this state for the
166 purpose of selling, delivering or taking orders; (v) notwithstanding the
167 fact that retail sales are made from outside this state to a destination
168 within this state and that a place of business is not maintained in this
169 state, engaging in regular or systematic solicitation of sales of tangible
170 personal property in this state by the display of advertisements on
171 billboards or other outdoor advertising in this state, by the distribution
172 of catalogs, periodicals, advertising flyers or other advertising by
173 means of print, radio or television media, or by mail, telegraphy,
174 telephone, computer data base, cable, optic, microwave or other
175 communication system, for the purpose of effecting retail sales of

176 tangible personal property, provided one hundred or more retail sales
177 from outside this state to destinations within this state are made
178 during the twelve-month period ended on the September thirtieth
179 immediately preceding the monthly or quarterly period with respect to
180 which liability for tax under this chapter is determined; (vi) being
181 owned or controlled, either directly or indirectly, by a retailer engaged
182 in business in this state which is the same as or similar to the line of
183 business in which the retailer so owned or controlled is engaged; (vii)
184 being owned or controlled, either directly or indirectly, by the same
185 interests that own or control, either directly or indirectly, a retailer
186 engaged in business in this state which is the same as or similar to the
187 line of business in which the retailer so owned or controlled is
188 engaged; (viii) being the assignee of a person engaged in the business
189 of leasing tangible personal property to others, where leased property
190 of such person is situated within this state and such assignee has a
191 security interest, as defined in subdivision (35) of subsection (b) of
192 section 42a-1-201, in such property; (ix) notwithstanding the fact that
193 retail sales of items of tangible personal property are made from
194 outside this state to a destination within this state and that a place of
195 business is not maintained in this state, repairing or servicing such
196 items, under a warranty, in this state, either directly or indirectly
197 through an agent, independent contractor or subsidiary; [and] (x)
198 selling tangible personal property or services through an agreement
199 with a person located in this state, under which such person located in
200 this state, for a commission or other consideration that is based upon
201 the sale of tangible personal property or services by the retailer,
202 directly or indirectly refers potential customers, whether by a link on
203 an Internet web site or otherwise, to the retailer, provided the
204 cumulative gross receipts from sales by the retailer to customers in the
205 state who are referred to the retailer by all such persons with this type
206 of agreement with the retailer is in excess of two thousand dollars
207 during the four preceding four quarterly periods ending on the last
208 day of March, June, September and December; and (xi) having a
209 substantial economic presence within this state, evidenced by a

210 purposeful direction of business toward this state, examined in light of
211 the frequency, quantity and systematic nature of the retailer's
212 economic contacts with this state, without regard to physical presence,
213 and to the extent permitted under the Constitution of the United
214 States.

215 Sec. 6. (NEW) (*Effective from passage and applicable to calendar years*
216 *commencing on or after January 1, 2016*) (a) (1) Each retailer that is not
217 registered to collect Connecticut sales tax shall notify its Connecticut
218 purchasers that sales or use tax is due on certain purchases made from
219 the retailer. Such notification shall be sent to all Connecticut
220 purchasers by January thirty-first of each year and shall include the
221 total amount paid by the purchaser for Connecticut purchases made
222 from the retailer in the previous calendar year. Such notification shall
223 also include, if available, the dates of purchases, the amounts of each
224 purchase, and the category of the purchase, including, if known by the
225 retailer, whether the purchase is exempt or not exempt from taxation.
226 The notification shall state that the state of Connecticut requires a sales
227 or use tax return to be filed and sales or use tax paid on certain
228 Connecticut purchases made by the purchaser from the retailer. Failure
229 to provide the notice required under this subdivision shall subject the
230 retailer to a penalty of five dollars for each such failure, unless the
231 retailer shows reasonable cause for such failure.

232 (2) The notification specified in this subsection shall be sent
233 separately to all Connecticut purchasers by first-class mail and shall
234 not be included with any other shipments. The notification shall
235 include the words "Important Tax Document Enclosed" on the exterior
236 of the mailing. The notification shall include the name of the retailer.

237 (b) (1) Each retailer that is not registered to collect Connecticut sales
238 tax shall file an annual statement for each purchaser with the
239 commissioner on such forms as the commissioner may prescribe
240 showing the total amount paid for Connecticut purchases of such
241 purchasers during the preceding calendar year or any portion thereof

242 and such other information as the commissioner may require, and such
243 annual statement shall be filed on or before March first of each year.

244 (2) The commissioner may require any retailer that is not registered
245 to collect Connecticut sales tax that makes total Connecticut sales in
246 this state of more than one hundred thousand dollars in a year to file
247 the annual statement described in subdivision (1) of this subsection
248 electronically or by other means as determined by the commissioner.
249 Failure to file the annual statement shall subject the retailer to a
250 penalty of ten dollars for each purchaser that should have been
251 included in such annual statement, unless the retailer shows
252 reasonable cause for such failure.

253 Sec. 7. Subsection (c) of section 12-711 of the 2016 supplement to the
254 general statutes is repealed and the following is substituted in lieu
255 thereof (*Effective January 1, 2017, and applicable to income years*
256 *commencing on or after January 1, 2017*):

257 (c) (1) If a business, trade, profession or occupation is carried on
258 partly within and partly without this state, as determined under rules
259 or regulations of the commissioner, the items of income, gain, loss and
260 deduction derived from or connected with sources within this state
261 shall be determined by apportionment under such rules or regulations
262 and the provisions of this subsection.

263 (2) The proportion of the net amount of the items of income, gain,
264 loss and deduction attributable to the activities of the business, trade,
265 profession or occupation carried on in this state shall be determined by
266 multiplying the net amount of the items of income, gain, loss and
267 deduction of the business, trade, profession or occupation by the
268 [average of the percentages of property, payroll and gross income in
269 this state] gross income percentage. The gross income percentage shall
270 be computed by dividing the gross receipts from sales [of property or
271 services] earned within this state by the total gross receipts from sales,
272 [of property or services,] whether earned within or without this state.

273 For the purposes of this subdivision:

274 (A) Gross receipts from sales of tangible personal property are
275 considered to be earned within this state when the property is
276 delivered or shipped to a purchaser within this state, regardless of the
277 F.O.B. point or other conditions of the sale.

278 (B) Gross receipts from sales of services are considered to be earned
279 within this state [when the services are performed by an employee,
280 agent, agency or independent contractor chiefly situated at, connected
281 by contract or otherwise, with or sent out from, offices or branches of
282 the business, trade, profession or occupation or other agencies or
283 locations situated within this state.] if the market for the services is in
284 this state. The taxpayer's market for services is in this state if and to the
285 extent the service is used at a location in this state.

286 (C) Gross receipts from the rental, lease or license of tangible
287 personal property are considered to be earned within this state if and
288 to the extent such property is situated in this state.

289 (D) Gross receipts from the rental, lease or license of intangible
290 property are considered to be earned within this state if and to the
291 extent such property is used in this state. Intangible property utilized
292 in marketing a good or service to a consumer is used in this state if that
293 good or service is purchased by a consumer in this state.

294 (E) Gross receipts from the sale or other disposition of tangible
295 personal property or intangible property are excluded from the gross
296 income percentage if such property is not held by the taxpayer
297 primarily for sale to customers in the ordinary course of the taxpayer's
298 trade or business.

299 (F) Gross receipts from the sale, rental, lease or license of real
300 property are excluded from the gross income percentage.

301 (G) Gross receipts, other than those receipts described in

302 subparagraphs (A) to (F), inclusive, of this subdivision, are considered
 303 to be earned within this state to the extent the taxpayer's market for the
 304 sales is in this state.

305 Sec. 8. Subsection (a) of section 12-712 of the general statutes is
 306 repealed and the following is substituted in lieu thereof (*Effective*
 307 *January 1, 2017, and applicable to income years commencing on or after*
 308 *January 1, 2017*):

309 (a) (1) The portion of a nonresident partner's distributive share of
 310 partnership income that is derived from or connected with sources
 311 within this state shall be determined [pursuant to regulations adopted
 312 by the commissioner, which regulations shall be consistent] in
 313 accordance with the provisions of section 12-711, as amended by this
 314 act.

315 (2) The portion of a nonresident shareholder's pro rata share of S
 316 corporation income that is derived from or connected with sources
 317 within this state shall be determined [pursuant to regulations adopted
 318 by the commissioner, which regulations shall be consistent] in
 319 accordance with the provisions of section 12-711, as amended by this
 320 act.

321 (3) The portion of a nonresident beneficiary's share of trust or estate
 322 income that is derived from or connected with sources within this state
 323 shall be determined [under regulations adopted by the commissioner,
 324 which regulations shall be consistent] in accordance with the
 325 provisions of section 12-711, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to income years commencing on or after January 1, 2016</i>	12-213(a)(28)(A)

Sec. 2	<i>from passage and applicable to income years commencing on or after January 1, 2016</i>	12-218(b)
Sec. 3	<i>from passage and applicable to income years commencing on or after January 1, 2016</i>	12-222(b)
Sec. 4	<i>October 1, 2016</i>	12-407(a)(12)
Sec. 5	<i>October 1, 2016</i>	12-407(a)(15)(A)
Sec. 6	<i>from passage and applicable to calendar years commencing on or after January 1, 2016</i>	New section
Sec. 7	<i>January 1, 2017, and applicable to income years commencing on or after January 1, 2017</i>	12-711(c)
Sec. 8	<i>January 1, 2017, and applicable to income years commencing on or after January 1, 2017</i>	12-712(a)

Statement of Purpose:

To amend the definition of captive real estate investment trust; to provide for market based sourcing for corporation business tax purposes; to change the filing date of the Connecticut corporation tax return; to amend the definitions of "retailer" and "engaged in business in the state" for sales tax purposes; to require certain retailers to notify Connecticut purchasers that sales and use tax may be due to Connecticut and to file an annual report with the state; and to require single factor apportionment with market based sourcing for pass-through entities for income tax purposes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]